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October 1, 2020

Hon. Valerie Caproni  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 240  
New York, NY 10007

**MEMO ENDORSED**

**RE: *Employers Insurance Company of Wausau v. 616 First Avenue LLC et al.*,  
Civil Action No. 1:20-cv-6942 – Parties’ Joint Request for Adjournment of  
Initial Case Management Conference and Extension of Time to File the  
Opposition to Defendants’ Motion to Dismiss**

Dear Hon. Caproni:

Pursuant to the Notice of Initial Pre-Trial Conference in the matter of *Employers Insurance Company of Wausau v. 616 First Avenue LLC et al.*, No. 1:20-cv-6942, the parties are currently scheduled to conduct the Initial Pretrial Conference (“IPTC”) in accordance with Rule 16 by teleconference on October 9, 2020 at 11:30 am. Defendants, 616 First Avenue LLC, Fourth Avenue Property Owner LLC, and 514 West 24<sup>th</sup> Owner LLC, filed a motion to dismiss, or in the alternative to stay, on September 24, 2020. Plaintiff’s opposition is currently due October 8, 2020. The parties have agreed to request an adjournment of the IPTC, as well as an extension of time to file opposition and reply memoranda, for the following reasons and jointly request alternative dates set forth below. This is the first request for an adjournment and extension of time.

The parties request adjournment and this extension of time in light of the scheduled argument on November 11, 2020 of Employers Insurance Company of Wausau’s (“Employers”) motion to stay based on Wis. Stat. § 801.63 (Wisconsin’s *forum non conveniens* statute), in the action captioned *616 First Avenue LLC et al. v. Employers Insurance Company of Wausau*, No. 2020CV001456, Circuit Court of the State of Wisconsin (“Wisconsin Action”), which was filed on August 27, 2020. Oral argument on Employers’ *forum non conveniens*

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motion had been scheduled for September 21, 2020, but when the parties appeared for the hearing via Zoom on September 21<sup>st</sup>, the court announced that it needed more time to consider the briefing and *sue sponte* postponed argument to November 11, 2020. The *forum non conveniens* motion in the Wisconsin Action is fully briefed, awaiting argument, and involves several of the same issues relevant to Defendants' motion to dismiss/stay in the action before Your Honor.

In addition, the parties intend to jointly request that the court in the Wisconsin Action move the hearing of the *forum non conveniens* motion to a date earlier than November 11<sup>th</sup>.

The adjournment and extension of time may resolve the forum dispute in the Wisconsin Action prior to any consultation regarding a proposed Civil Case Management Plan and preparation of the joint letter for this matter. A case schedule will depend significantly on where the case is ultimately pending. Therefore, the parties respectfully request an adjournment of the IPTC and extension of time to oppose and reply to the motion to dismiss/stay before this Court, to permit a better procedural setting in which to jointly propose a Civil Case Management Plan.

The parties propose the following alternative dates:

Opposition to Defendants' Motion to Dismiss, or in the Alternative, to Stay This Action in Favor of the Wisconsin Court Action	<b>Monday, October 12, 2020</b>
Reply to Plaintiff's Opposition	<b>Monday, October 23, 2020</b>
Joint Letter Filing	<b>Wednesday, November 25, 2020</b>
IPTC	<b>Friday, December 4, 2020</b>

Sincerely,

/s/ Gerald P. Dwyer, Jr.

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Fourth Avenue Property Owner LLC, and 514 West 24<sup>th</sup> Owner LLC*

Cc: Counsel of record (via ECF)

Application GRANTED. Plaintiff's response to Defendant's motion is due no later than **Monday, October 12, 2020** and Defendants' reply in support of the motion is due no later than **Friday, October 23, 2020**.

The initial pre-trial conference currently scheduled for Friday, October 9, 2020 is hereby adjourned to **Friday, December 4, 2020, at 10:00 A.M.** Pre-conference submissions are due no later than **Wednesday, November 25, 2020**.

SO ORDERED.



Date: October 2, 2020

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE